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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

N^o. 244

LEONA ANDERSON MAY,

Appellant,

vs.

OWEN ANDERSON

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM**

I. ENGLE,

Counsel for Appellee.

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**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM**

I. ENGLE being first duly sworn on oath deposes and says that he is plaintiff's co-counsel in the above entitled action and that this affiant makes this Contra-Jurisdictional Statement and Motion in opposition to the defendant's appeal to the Supreme Court of the United States on the grounds that the Supreme Court of the United States does not have jurisdiction of this matter and there is no debatable constitutional question involved. Reasons given are as follows:

1. There is only one basic question involved, namely, the validity of the Wisconsin decree awarding custody of the

children of the parties to the plaintiff. The law is well settled that domicile follows the husband and the wife must conform to the husband's place of living when such is reasonable. The Wisconsin Court had jurisdiction of the res, or subject matter, by virtue of the domicile of the children in Wisconsin, and the Trial Court and Appellate Court of Ohio correctly held that the Wisconsin Court had therefore jurisdiction to determine the custody of the children since the children were domiciled in the State of Wisconsin at all times during which consent of the father was present; that a temporary leave from the State of Wisconsin would not deprive the children of the original domiciliary status.

2. The Trial Court and Appellate Court of Ohio correctly held that the full faith and credit clause of the constitution was applicable to this situation and held that the Wisconsin decree was valid in Ohio.

3. That the fourteenth amendment to the constitution has not been violated as the defendant claims since equal protection of the law was afforded to the defendant at all times; that the mere fact that the defendant cannot change the domicile of the children during her marriage to the plaintiff in no way discriminates against the defendant nor takes her liberty without due process of law. If the defendant were divorced or permanently separated from the plaintiff at the time that the divorce action was commenced and if she had the children at the time of such separation or divorce she could then have established the domicile of the children at such place that her place of abode was established.

4. That the Appellate Court of Ohio in upholding the Trial Court has correctly applied the law to the facts and has found that "no debatable constitutional question is involved" and we respectfully submit to the Court that the Supreme Court of the United States has no jurisdiction in this matter for the reasons aforementioned.

WHEREFORE, THIS AFFIANT MOVES FOR AN ORDER dismissing the appeal to the Supreme Court of the United States and for affirmation of the judgment of the Trial and Appellate Courts of the State of Ohio.

Dated this 10th day of July, 1952.

I. ENGLE,

Counsel for Appellee.

(3183)

BRIEF of APPEL- LEE

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BRIEF OF APPELLEE

I. ENGLE,

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BRIEF OF APPELLEE

OPINIONS BELOW

The memorandum opinion of the Supreme Court of Ohio has been officially published. *Anderson v. May* (1952), 157 Ohio St. 436, 105 N.E. 2d 648.

The Court of Appeals' opinion has not been published in the official Ohio Appellate Reports. It has, however, been published. *Anderson v. May* (1952), 107 N.E. 2d 358, 62 Ohio Law Abst. 324, 48 Ohio Op. 132.

The Probate Court's opinion has not been published.

The judgment of the County Court of Waukesha County has not been published.

PRELIMINARY STATEMENT

This brief is filed in support of the motion of the appellee Owen Anderson to affirm the judgment of the lower courts upholding the Wisconsin decree awarding custody of the children of the parties to the father and dismissing the constitutional questions raised as not debatable and as validly resolved by the lower courts.¹

JURISDICTION

The constitutional questions raised by appellant are neither substantial or debatable. These involve challenge to validity of *General Code of Ohio*, section 7996, Article IV, section 1, the full faith and credit provision, and the Fifth and Fourteenth Amendments to the Constitution involving "due process of law" and "equal protection of the laws." The two lower Ohio courts have resolved these questions in favor of appellee after careful consideration, and the Supreme Court of Ohio has decided that "no debatable constitutional question is involved."

The questions raised by appellant concern rather the jurisdiction of a court over a child's custody when said child is outside the state — not constitutional questions.

QUESTIONS PRESENTED

Appellant contends that the "due process" and "equal protection clauses" of the 14th Amendment and the 5th Amendment to the Constitution have been violated and that Article IV, Section 1 of the Constitution of the United States, the "full faith and credit clause", must be extended to meet jurisdictional standards imposed by

¹The statement of facts as presented by appellant are substantially correct, and not in dispute.

the 5th and 14th Amendments; and further contends that these fundamental constitutional rights have been violated. The one basic question involved is the validity of the Waukesha, Wisconsin County Court decree awarding custody of the children of the parties to the appellee and whether said decree is entitled to "full faith and credit" enforcement in the State of Ohio. This question in turn leads to the crux of this case — where were the children domiciled in January, 1947?

SUMMARY OF ARGUMENT

The children of the parties were domiciled in the State of Wisconsin, the residence and domicile of the father; and their temporary visit to Ohio with the mother did not change their domiciliary status to deprive the Wisconsin Court of jurisdiction of the children of the parties.

Article IV, Section 1 of the Constitution of the United States providing for "full faith and credit" to be given to adjudications of sister states was adhered to when the Probate Court of Ohio and the Court of Appeals of Ohio gave full faith and credit to the decree of the Wisconsin County Court of Waukesha in awarding custody of the children to the father on the evidence before the Court.

The 5th and 14th Amendments to the Constitution of the United States providing for "due process of law" and "equal protection of the laws" was afforded the mother in every respect and the mere fact that the mother, under the law, cannot establish the domicile of the children without the consent of the father does not deprive her of due process of law nor of equal protection of the law for the marital status brings with it obligations and privileges, benefits and detriments, disadvantages and compensations which are contracted upon when entering into the mar-

riage relationship. Because of this relationship the children's domicile remained in Wisconsin and the Wisconsin Court had discretionary powers as to custody of the children and such award is entitled to "full faith and credit."

ARGUMENT

Appellant left her husband and established domicile in Ohio. Did this action affect the domicile of the children?

It is the contention of appellant that the wife has the legal power to move her children wherever she pleases and to establish the children's domicile for them. This line of reasoning is contrary to all established law. The law is well settled that domicile follows that of the husband and the wife must conform to the husband's place of living when such is reasonable.

The fact of the matter is that the trial court of Ohio finds it was the understanding of the parties that appellant's stay in Ohio would be only temporary and that she would return to Wisconsin with the children before anything permanent was done about their marital status.² Appellee never consented to his children permanently leaving Wisconsin. The children were in Ohio less than ten days after their mother acquired an Ohio domicile. Did the Wisconsin Court lose jurisdiction to determine custody under these circumstances?

Appellant has attacked the validity of section 7996, *Ohio General Code* on the ground that, as construed and applied in this case, it is repugnant to section 1 of the 14th Amendment. The statute reads as follows:

² Taken from the Facts on page 14 as stipulated on the Appeal to the Supreme Court of the United States.

"Section 7996. The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto."³

This is merely a codification of the common law in existence in Wisconsin as well as in most if not all of the states of the United States and to challenge this established concept is to challenge the very basic long established concepts of the law of our land. Where the validity of a statute is in question, it is a rule of law that it should always be resolved in favor of validity especially when it is a codification of the common law.

American Jurisprudence, Volume 17, section 58 states, that the doctrine that the children's domicile follows that of the father, rests upon the reciprocal rights and duties of the father and child.⁴ It obtains that even though the parents may be living apart.⁵ The fact that a married woman has in appropriate circumstances acquired a domicile different from that of her husband does not affect the domicile of minor children of the two born in lawful wedlock⁶ in the absence of some neglect of parental duty on the part of the father⁷ or his consent to their acquiring a residence elsewhere or of his own voluntary relinquishment⁸ or of some provision of the statute.⁹ It has been held however if compelled by her husband's desertion or misconduct to live separate and apart the domicile of the children follows that of the parent with whom they live.¹⁰ Thus where a husband deserts his wife

³ General Code of Ohio of 1910, page 1702, recodified as section 8002-2 *Ohio General Code*. 124 *Ohio Laws* 65.

⁴ See *Glass vs. Glass*, 260 Mass. 562, 151 N.E. 621, 53 A.L.R. 1157.

⁵ *Yarborough vs. Yarborough*, 290 U.S. 202, 54 S. Ct. 181.

⁶ *Yarborough vs. Yarborough*, *Supra*.

⁷ *Glass vs. Glass*, *Supra*.

⁸ *Yarborough vs. Yarborough*, *Supra*.

⁹ *Glass vs. Glass*, *Supra*.

¹⁰ *Wear vs. Wear*, 130 Kan. 205, 72 A.L.R. 425.

and child it has been held that their domicile remains unchanged and the domicile of the child is not affected by a temporary visit to the father.¹¹

The *Yarborough* case held that the domicile of a minor child of the parties to a divorce suit was that of her father and continued to be such until the entry of a consent decree making a settlement of temporary and permanent alimony including a provision for the support of the minor. In the *Glass* case, *supra*, it was held that a minor residing with his parents in one state who is taken by his mother into another state after the institution of divorce proceedings against her in the former one does not become an inhabitant of the latter state.

In *Lanning vs. Gregory*, 100 Tex. 310, 99 S.W. 542, it was held that notwithstanding an agreement between the parents upon their separation that the mother should have control of the child, the domicile of the infant follows that of his father.

In *Re: Adoption of Francis*, 49 O.L.A. 427, it was held¹² in an adoption proceeding, that where a Nevada divorce had been obtained by the mother, the child being at the time of the divorce in Ohio, and the father being resident of New York, the Nevada decree ordering support by the father and custody of the child to the mother, held to be null and void; and it further holds that where the child was taken from the father's domicile, without his consent and against his will, the child was legally domiciled in the State of New York with the father.

In the instant case although the children were taken into the State of Ohio with the father's knowledge and consent, their return was withheld against his will and

¹¹ *Wear vs. Wear*, *Supra*.

¹² I believe this case to be directly in point to the case at bar.

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without his consent. Consequently the children's domicile remained in Wisconsin.

From all of this authority we come to the inevitable conclusion that the domicil of the minor children is always the domicil of that of the father unless he consents to a new domicil being established or unless a husband deserts his wife. In the case at bar it was the wife who left the husband and the domicil remained that of the husband. The record is clear that the father at no time relinquished his control over the custody of the children and it was the finding of the trial court that appellant's visit in Ohio was to be only temporary and that she would return to Wisconsin with the children.

Counsel for appellant cites the case of *Harisades vs. Shaugnessy*, 72 S. Ct. 512, contending that the Supreme Court in this recent decision may affect the jurisdictional significance of domicil. The Supreme Court in that case decided that the due process clause does not shield the citizen from conscription and separation from his family and friends and business while transported to foreign lands to stem the tide of Communism in spite of the fact that severe hardship was inflicted on individuals. This decision was reached in rejecting the claims of constitutional infringement where the basic contention of the appellant was that admission for permanent residence confers a "vested right" on the alien equal to that of the citizen to remain within the country and that the alien is entitled to constitutional protection in that matter to the same extent as the citizen. The case involved the Alien Registration Act of 1940 and there too it was argued that due process of law in violation of the 5th Amendment was denied the alien because he suffered personal hardship. So here appellant Mrs. May may suffer personal hardship by being separated from her children, which is

debatable,¹³ but that does not in itself constitute a violation of the due process guarantee of the Constitution.

Appellant refers to *Halvey vs. Halvey*, 330 U.S. 610, 67 S. Ct. 903. That decision held that the full faith and credit clause was not violated since it was not shown or proven that the New York decree in modification of the Florida decree exceeded the limits permitted under the Florida law relative to the child's visitation and vacations with the father. That case did make clear the fact that states must give full faith and credit to their neighbor states but does not require them to do more. In *Davis vs. Davis*, 305 U.S. 32, that same principle is expounded; that full faith and credit must be given in each state to judicial proceedings of other states and applies to all courts Federal as well as State. Applying the facts to the case at bar, the Wisconsin decree must be upheld in all of the states of the United States by virtue of the full faith and credit clause and was so done by the Ohio courts.

Counsel for appellant argues long and with multitude of verbiage on lack of Wisconsin Court jurisdiction over the person of the Ohio defendant, but we find said issue completely irrelevant here. We are not concerned with the service necessary to the obtaining of a money judgment or matters involving lunatics or incompetents. We are here concerned over jurisdiction in divorce matters only. To determine the marital status of the parties, substituted service is sufficient. It would appear then that

¹³ The Waukesha County Court, Wisconsin record is clear on its face that the mother of the children in this action did not want the children as indicated by her letter of January 2, 1947, which was admitted into evidence in which she stated, "I don't intend to take the kids from you. You can have them." In that same letter she had admitted her guilt and further stated, "You can send me whatever you want me to have if its nothing its more than I deserve."

only appellant's second question is material — and this question of domicile we have already taken up at some length.

In *Pennoyer vs. Neff*, 95 U.S. 714, the Court held that while the courts of the United States are not foreign tribunals of a different sovereignty and are bound to give a judgment of a state court only the same faith and credit to which it is entitled in the courts of another state; it was also held that substituted service by publication or in any other authorized form is sufficient to inform a non-resident of the object of the proceedings taken. Why did not appellant oppose the jurisdiction of the Wisconsin Court to determine the custody of the children by appearing specially to deny jurisdiction when she was apprised of such proceedings. Full faith and credit should be given to the Wisconsin decree under such circumstances for appellant had ample opportunity to appear specially or even to present evidence of her fitness as a mother.

In *Estin vs. Estin*, 344 U.S. 541, it was held that Nevada could not adjudicate the rights of the wife under a New York judgment where she was not personally served and did not appear in the Nevada proceeding. Since Nevada had no power to adjudicate the wife's rights in the New York judgment, New York need not give full faith and credit to any phase of Nevada's judgment. In the case at bar the Wisconsin court had jurisdiction of the res, or subject matter, by virtue of the domicil of the children in Wisconsin and therefore could adjudicate the rights of the children in the divorce action.¹⁴ The children were domiciled in the State of Wisconsin at all times during which consent of the father was present; and a

¹⁴ Decisions of County Court of Waukesha County, Probate Court of Ohio, and Court of Appeals of Ohio.

temporary leave from the State of Wisconsin would not deprive the children of their original domiciliary status.

Counsel for appellant continually uses the term "minor or incompetent." Minor children of parents before the Court in a divorce matter cannot be placed in said category. Notice need not be given minor children in a divorce action in Wisconsin and Wisconsin Courts can and do make orders pertaining to custody without service and without the children being named parties to the case. Jurisdiction over the children of the parties lies in the relationship of marriage and divorce and reasonable notice to the other party alone is sufficient. Counsel for appellant exhibits grave concern over the "slavery" of the situation. But can anyone say that appellant didn't have sufficient notice of said divorce proceedings? Or does counsel feel that children should be moved promiscuously from state to state to avoid the court's jurisdiction to the prejudice of the rights of the other party to the marriage? Let Counsel's fear be consoled — Wisconsin's unborn are not conveyed away! Due process is still very much the law and service on lunatics and incompetents is still the law of the state. And so is the law of domicile and substituted service still abided by? Here was good substituted service on the wife giving the Wisconsin Court complete jurisdiction of the divorce and the offspring thereof who were still domiciled in Wisconsin.

Mrs. May was not deprived of the privilege of moving her home from Wisconsin to Ohio. She was deprived of changing the domicil of the children from Wisconsin to Ohio. Since there was no neglect of parental duty on the part of the father nor voluntary relinquishment of the domicil of the children, nor consent to their acquiring a domicil elsewhere, this case clearly falls within the principles previously expounded. In the *Yarborough*

case, *supra*, and the host of other cases previously enumerated from American Jurisprudence, the desertion was not by the husband but by the wife which reinforces the argument that the domicile of the children was in fact never changed. The fact that they were minors and were not competent to change their domicile without the consent of the father coupled with the fact that the Wisconsin Court had jurisdiction to dispose of the children's custody was recognized by the Ohio courts in giving full faith and credit to the decision rendered by the Wisconsin court.

In effect, counsel for appellant is asking this Court to change the long standing rule that the husband is the head of the family and that he may choose any reasonable place or mode of living and the wife must conform thereto. If the Court were to assume such a position all precedent would be shattered and the marriage relationship itself would be placed in jeopardy. The wife could maintain that she was entitled to choose the place of living regardless of the fact that the husband is obligated to support her and may not be in a position to support his wife in another state. Appellant here is not asking the court for "equal protection of the laws" but is asking for "paramount and special protection of the laws." Marriage as a contract brings with it compensations and detriments, obligations and privileges, benefits and disadvantages, and such a contractual relationship does not deprive the wife of due process of law or equal protection of the laws merely because he is obligated to provide for her and conversely she must sacrifice a small part of her independence to him. So his domicile becomes her's and that of their children.

Counsel for appellant has perverted the meaning of the Contra-Jurisdictional statement submitted on behalf

of the appellee. Counsel states that the construction and application of the "due process" and "equal protection" clauses of the Fourteenth Amendment maintain and support the position of the appellant. The Contra-Jurisdictional statement that a wife, permanently separated or divorced from the husband, but having the children at the time of such separation or divorce would be entitled to establish the domicile of the children at such place that her place of abode was established, does not allow the inference that the appellee Anderson had either relinquished the right to determine the domicile of the children, or had given his consent to have a new domicile established by virtue of a separation agreement or divorce stipulation. Indeed by no other means could the mother change the domicile of the children.

The trial court of the State of Ohio following a sound course of reasoning in stating that since the father never consented to the children permanently leaving Wisconsin, the change of domicile by the mother was ineffective to change the domicile of the children.

The court further stated:

"To say under these circumstances that the original Court lost jurisdiction to determine custody is to place a premium upon the taking of children from one state to another to avoid that court's jurisdiction." ¹⁵ Further, "that a court could be deprived of making a just and equitable order for the control, care, and education of minor children by the simple expedient of removing the children from the State. I do not believe that that is the meaning of the law." ¹⁶

¹⁵ Page a 9, Opinion of Probate Court of Ohio. (Unpublished)

¹⁶ Page a 10, Opinion of Probate Court of Ohio. (Unpublished)

To carry argument of appellant to its logical conclusion would be to say that full faith and credit need never be given by another state to its sister state where children have been taken out of the state for the purpose of establishing a new domicile to defeat justice, by adjudication of the issues; that the father cannot establish the domicile for his children; and that the due process and equal protection amendments to the Constitution can be invoked to protect such wrongdoing on the part of the mother.

The Appellate Court of Ohio in supporting the Trial Court of Ohio stated that:

"Two elements must concur to establish domicile—(1) residence, and (2) intention of remaining."¹⁷ Further, "She brought them to Ohio on a temporary and conditional basis with the understanding that they should be returned if she decided to separate from her husband. She decided to separate and then it was that the temporary permission ended. Until she said to him over the phone on New Year's day of 1947, 'Owen I'm not coming back'."¹⁸

"The children were domiciled in Wisconsin until December 26, 1946, where the Wisconsin court had exclusive jurisdiction, and that court did not lose its jurisdiction by reason of their going with their mother to Ohio to meditate and decide her program of life for the future. Temporary absence of the children from Wisconsin could not change their legal settlement. The Wisconsin court did not lose jurisdiction while they were temporarily in Ohio."¹⁹

¹⁷ Page a 17, Opinion of Court of Appeals of Ohio, Dec. 15, 1951. Also see *Anderson vs. May* (1952), 107 N.E. 2d 358, 62 Ohio Law, Abst. 324, 48 Ohio Op. 132.

¹⁸ Page a 17, Opinion of Court of Appeals of Ohio, Dec. 15, 1951. Also see *Anderson vs. May* (1952), 107 N.E. 2d 358, 62 Ohio Law, Abst. 324, 48 Ohio Op. 132.

¹⁹ Page a 17, Opinion of Court of Appeals of Ohio, Dec. 15, 1951. Also see *Anderson vs. May* (1952), 107 N.E. 2d 358, 62 Ohio Law, Abst. 324, 48 Ohio Op. 132.

"The children were in Ohio with his consent and permission. After that announcement he demanded that she return the children which demand was ignored. The children from that time forward were in Ohio against his will and without his permission. It was during that period of time that the divorce proceedings were commenced and concluded. The change of domicile of the mother under these circumstances did not in any wise effect a change of the domicile of the children." ²⁰

In *Milliken vs. Meyer*, 311 U.S. 457, 61 S. Ct. 339, it was held that the responsibilities of state citizenship arise out of relationship to State which domicile creates, which relationship is not dissolved by mere absence from the state and attendant duties like rights and privileges incident to domicile are not dependent on continuous presence in the state, and one such incidence of "domicil" is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of proceedings against him. *U. S. C. A. Const. Amend. 14*. It was further held that if the judgment on its face appears to be a "record of a court of general jurisdiction", such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence or by the record itself. *Adam vs. Saenger*, 303 U.S. at page 62, 58 S. Ct. at page 456. In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the principles on which the judgment is based. *Fauntleroy vs. Lum*, 210 U.S. 230, 28 S. Ct. 641. Whatever mistake of law may

²⁰ Page a-18, Opinion of Court of Appeals of Ohio, Dec. 15, 1951. Also see *Anderson vs. May* (1952), 107 N.E. 2d 358, 62 Ohio Law, Abst. 324, 48 Ohio Op. 132.

underlie the judgment it is "conclusive as to all the media concludendi."

That case also cited 28 U. S. C. A., Section 687, which states the power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by Const. art. 4, section 1, and by the constitutional provisions authorizing legislation necessary and proper for executing the powers vested by the constitution and declaring the supremacy of the authority of the national government within constitutional limits. *Atchison, T. & S. F. R. Co. vs. Sowers*, 29 S. Ct. 397, 213 U.S. 55. This section prescribes a rule of evidence rather than one of jurisdiction.²¹

That case further held that the adequacy of substituted service on an absent defendant who has a domicile in state so far as "due process of law" is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of proceedings and an opportunity to be heard, and if it is, traditional notions of fair play and substantial justice implicit in "due process" are satisfied.²² Wisconsin Statutes of 1949 provide:

Section 262.12:

"When the summons cannot with due diligence be served within the state, the service of the summons may be made without the state or by publication upon a defendant when it appears from the verified com-

²¹ Since application of the full faith and credit clause is a rule of evidence, great weight should be given to its application by the lower courts.

²² The mother or guardian of the minor children was given due notice of the divorce proceedings and due notice, by the Complaint served, that custody of the children was demanded by the plaintiff husband, and did not challenge any of these proceedings by a *special appearance* which would not have jeopardized her jurisdictional challenge at a later date.

plaint that he is a necessary or proper party to an action or special proceeding as provided in section 262.13 in any of the following cases: (1) (2) (3) (4) (5) when the action is for divorce or for annulment of marriage."

Section 262.13:

"In the cases specified in Section 262.12 the plaintiff may, at his option, and in lieu of service by publication, cause to be delivered to any defendant personally without the state a copy of the summons and verified complaint or notice of object of action as the case may require, which delivery shall have the same effect as a completed publication and mailing."

Argument by counsel for appellant that the minor children should have been served with process in order to obtain jurisdiction of them is without merit since a minor cannot change his domicile, a relationship which can only be changed by the father except under certain circumstances such as desertion by him of his family or if the father consents to such change, or gives up his right to determine their domicile. Since the procedure in the State of Wisconsin does not require service of process upon a minor when the parents commence a divorce action but still the Court adjudicates the rights of such minor during such proceedings, then why should a minor have to be served with process to adjudicate his or her status when the parents reside in different states as counsel for appellant urges. Appellant's own Citations from *Restatement of Conflicts*, sections 117, 145, 146 and 149 and 27 *Corpus Juris Secundum* 1163, bears out appellee's position. It seems that Counsel for appellant overlooks the fact that the Wisconsin Court followed the legal requirements for service and took testimony relative to the fitness of the individual parent prior to the making of its order and that the custody award was by no means arbitrary and capricious but was decided on the merits.

CONCLUSION

From the mass of authority cited it is obvious and apparent that the Waukesha County Court of the State of Wisconsin was within its jurisdiction since the children of the parties were there domiciled and properly awarded their custody to the father; for the children did not acquire another domicile and remained within its jurisdiction although the children were outside the state; that the 5th and 14th Amendments to the Constitution of the United States have not been violated or infringed and that Article IV, section 1 of the Constitution providing for "full faith and credit" to an adjudication by a sister state was properly recognized by all of the Courts of the State of Ohio and that the Supreme Court of the United States should affirm the lower Courts of Wisconsin and Ohio in awarding custody of the children to the father; "that no debatable constitutional question is involved."²³

Should the Court in its sound discretion determine that debatable constitutional questions are involved then we submit they have been validly resolved and invoked by the lower courts so as not to deprive the appellant of due process of law or equal protection of the laws to infringe her constitutional rights.

Wherefore plaintiff appellee prays that the judgment of the lower courts be affirmed and the appeal by defendant appellant be dismissed and that appellee have his costs and disbursements, and for such other or further judgment or relief as may be just and equitable in the premises.

Respectfully submitted:

I. ENGLE,

Counsel for Appellee.

²³ Opinion of the Supreme Court of Ohio, April 2, 1952, in ordering Appeal dismissed, page a 19, also *Anderson vs. May* (1952), 157 Ohio St. 436, 105 N.E. 2d 648.